BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARK A. PACK Claimant	)	
VS.	)	
ADVANCED INDUSTRIES, INC. Respondent	)	Docket No. 1,026,099
AND	)	
HARTFORD UNDERWRITERS INS. CO. Insurance Carrier	)	

ORDER

Claimant requests review of the January 17, 2006 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

At a scheduled December 27, 2005, preliminary hearing the respondent and its insurance carrier did not appear. The Administrative Law Judge (ALJ) entered a default judgment awarding claimant temporary total disability compensation as well as medical treatment for injuries claimant suffered when he was struck by a golf cart while playing in a weekend golf tournament.

The respondent then filed a preliminary hearing application requesting the ALJ's December 27, 2005 Order be set aside. Another preliminary hearing was held on January 17, 2006, and the ALJ found that claimant's participation in the respondent's golf tournament was voluntary. Accordingly, the ALJ set aside the December 27, 2005 Order and denied claimant benefits.

Claimant requests review and argues that respondent's president told claimant he needed him to participate in the golf tournament. Because he was requested to participate in the golf tournament, claimant further argues that the injuries he suffered arose out of and in the course of his employment. Claimant requests the Board to reverse the ALJ's decision and find his claim compensable.

Conversely, respondent argues that participation in the weekend golf tournament was neither required nor an incident of claimant's employment. Respondent requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant assembles hybrid motors for buses for the respondent. On October 8, 2005, the claimant was participating in a weekend golf tournament sponsored by the respondent and its sister companies. The claimant was walking back towards the fairway when he was hit from behind by a golf cart. He suffered a broken tibia and fibula. Surgery involved a rod and screws to be placed in the tibia. Claimant returned to work for approximately two weeks when he developed an infection. Another surgery with skin grafts was required to treat the infection. On January 16, 2006, claimant returned to work for the respondent.

The golf tournament was held on a Saturday, it was a social event and participation was voluntary with employee's spouses invited to participate. But claimant testified that he had not planned on participating until the respondent's president, Keith Reizen asked him to play in the tournament. The claimant testified:

> Q. Was this a mandatory company activity?
>
> A. It wasn't mandatory.
>
> Q. Was it suggested that you participate in this event?
>
> A. Well, I was asked by Keith Reizen to play, but - -
>
> Q. Who is Keith Reizen?
>
> A. He's the president of our company.
>
> Q. What specifically did he say to you?
>
> A. Are you going to play in the golf tournament? I don't know. He says like, I need you to play. I don't think they had a lot of people coming out for the golf tournament.[1]

But claimant further testified that participation in the golf tournament was not mandatory and he understood that it would not affect his job if he declined to participate. He further testified:

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[1] P.H. Trans. at 7.

> Q. And at no time anybody from Advanced Industries ever said, you know, you are required to go play golf?
>
> A. No, no, no, huh-uh.[2]

Finally, claimant agreed that although he was asked to participate in the golf tournament he still could have declined without affecting his job.

> Q. And even though the company president asked you to play, you knew that you had the power or the right to decline and say no if you wanted to, correct?
>
> A. I could, yeah.
>
> . . .
>
> Q. The president asked you to play?
>
> A. Right.
>
> Q. He said, I need you to play?
>
> A. Right.
>
> Q. Did he suggest that that might affect your job if you didn't play?
>
> A. No, I mean he just said, I need you to play, so I decided to go play for him.[3]

Respondent argues that claimant's accident occurred during a golf tournament which was a recreational or social activity that claimant was not required to attend. Consequently, respondent argues K.S.A. 2005 Supp. 44-508(f) precludes a finding the accident arose out of and in the course of claimant's employment.

K.S.A. 2005 Supp. 44-508(f) provides:

> The words, 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

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[2] *Id*. at 13.

[3] P.H. Trans. at 14.

It was claimant's uncontradicted testimony that he was asked to participate in the golf tournament but understood that he could decline to participate without affecting his job.

2 *Larson's Workers' Compensation Law*, § 22.01 (2005) at 22-2, lists three factors to determine whether recreational and social activities fall within the course of an employee's employment.

One factor is whether the employer expressly or impliedly requires participation in the activity or brings the activity within the orbit of employment by making the activity part of the service of employment.

In this instance, the accident occurred while claimant was involved in an employer sponsored weekend golf tournament. Although the respondent's president asked claimant to participate, claimant understood the request was because there was a concern that not enough employees had signed up for the event. It is significant that claimant understood that participation was not mandatory and even though the president had asked him to play he further understood that he could decline to participate without any negative job repercussions. Accordingly, the request that he play cannot be considered either an express or implied requirement to participate in the golf tournament.

A second factor listed by *Larson's* in determining whether a recreational activity is within the course of employment is whether the employer derives a benefit from the employee's participation beyond the benefits of the employee's health and morale. In this case the activities were promoted by respondent and its sister companies. There were no incentives to increase sales and the activity was simply a recreational and social activity for respondent and its sister companies' employees and spouses.

A final factor in determining whether recreational activities are within the course of employment is whether they occur on the employer's premises during a lunch or recreation period as a regular incident of the employment. According to *Larson's*, "recreational injuries during the noon hour on the premises have been held compensable in the majority of cases."[4] In this instance, claimant was not on respondent's premises, was not on duty and was not being paid when the accident occurred.

In this case, the Board finds that participation in the golf tournament, while encouraged, was not required. The evidence establishes that claimant was neither expressly nor impliedly required to attend the golf tournament. Some employees signed up but then failed to show up and play. Nobody was reprimanded for not participating. Attendance was voluntary and took place after working hours on the weekend and off the respondent's premises. While there would be some benefit expected with providing

[4] 2 *Larson's Workers' Compensation Law*, § 22.03 (2005) at 22-6.

recreational and social events for employees that does not bring the activity within the course of employment.

The Board finds that claimant did not suffer accidental injury arising out of and in the course of his employment and the ALJ's Order is affirmed.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated January 17, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March 2006.

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BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Tracy M. Vetter, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director